MARATHON OIL CO. ET AL.

IBLA 83-874 Decided December 20, 1983

Appeal from decision of the Alaska State Office, Bureau of Land Management, segregating and terminating nonunitized portions of oil and gas leases A-028078, A-028083, A-028118, and A-028120.

Reversed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

Where only a portion of an oil and gas lease is committed to an approved unit agreement, sec. 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1976), mandates the segregation of the noncommitted lands into a separate lease.

2. Oil and Gas Leases: Unit and Cooperative Agreements

Sec. 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1976), contains no authority for the Department to segregate a unitized lease into separate leases upon its partial elimination from a unit plan by reason of contraction of the unit area.

APPEARANCES: K. David Hinkle, Esq., Anchorage, Alaska, for appellant, Marathon Oil Company; Stephen C. Hillard, Esq., Anchorage, Alaska, for Cook Inlet Region, Inc.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Marathon Oil Company (Marathon) and Cook Inlet Region, Inc. (Cook Inlet), have appealed from a decision dated July 14, 1983, of the Alaska State Office, Bureau of Land Management (BLM), segregating, extending, and terminating portions of certain leases previously within the Beaver Creek Unit, Agreement No. 14-08-0001-8868. 1/ Essentially, the decision segregated the nonunitized portion of each of leases A-028078, A-028083, A-028118, and A-028120, assigned the nonunitized portion new serial numbers (AA-50220, AA-50221, AA-50222, and AA-50223, respectively), and terminated the

1/ Marathon stated that its appeal was filed "as operator on behalf of itself and Union Oil Company of California." Cook Inlet filed a statement adopting and incorporating by reference the statement of reasons filed by Marathon. Cook Inlet owns an interest in certain of the leases, including 40 acres which, as of July 20, 1982, remained in the active participating area of the Beaver Creek Unit.

nonunitized leases effective June 13, 1980, because there had been no production of hydrocarbons from the segregated lands and the lands were therefore not held by production.

The original leases, which included the lands subject to this appeal, were issued in 1958. These lands were subsequently included in the Beaver Creek Unit pursuant to the Beaver Creek Unit Agreement, approved on June 28, 1967. Oil and gas in paying quantities was discovered on August 1, 1967, within the unit area and production has continued to the present. Marathon has acted as operator under the Beaver Creek Unit Agreement.

On October 18, 1978, appellant advised Geological Survey (Survey) that pursuant to section 2(e) of the unit agreement, automatic contraction of the unit area, effective June 13, 1978, would result in specific portions of each of the original leases involved herein being eliminated from the unit area. As stated in Marathon's schedule I, submitted to Survey with its letter of October 18, the eliminated acreages were:

A-028078	1,040 acres
A-028083	160 acres
A-028118	840 acres
A-028120	2,058 acres

On March 13, 1979, BLM issued a decision stating in pertinent part as follows:

> Effective June 13, 1978, certain lands were automatically eliminated from the Beaver Creek Unit Agreement. Departmental regulation 43 CFR 3107.5 provides that any lease eliminated from any approved or prescribed cooperative or unit plan, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement, whichever is the longer, and so long thereafter as oil and gas is produced in paying quantities.
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> [Leases which had been eliminated in their entirety were then listed.]
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> * * * * * * *
>
> The following leases are located partially within and partially outside the contracted boundary:

Anchorage Serial No.	(1) Acres within unit/participating area	(2) Acres outside unit/participating area	Total acres
A-028118	1,560	840	2,400
A-028120	160	2,058	2,218
A-028078	400	1,040	1,440
A-028083	2,400	160	2,560

> The eliminated portion of each lease and the portion which remains unitized continue to form one lease. Therefore, in each

case, the entire lease is extended by production, either actual or constructive. 2/

By letter dated July 2, 1982, BLM advised Survey (now Minerals Management Service) that it was "now in the process of segregating" the above leases and needed to know the production status of the nonunitized areas. By letter of July 20, 1982, Survey responded: "Our records indicated there has been no production of hydrocarbons from those lands scheduled for elimination from the unit."

On July 14, 1983, BLM issued the decision segregating and terminating the nonunitized portions of the leases. The decision reads:

> A Geological Survey letter to Marathon Oil Company dated October 27, 1978, gave notice of the automatic elimination of the lands listed below from the Beaver Creek Unit Agreement effective June 13, 1978, pursuant to Section 2(e). Departmental Regulation 43 CFR 3107.4-3 and Section 18(g) of the unit agreement provide that any lease committed to a unit plan which covers lands within and lands outside the unit area shall be segregated into separate leases effective on the date of unitization.
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> Accordingly, the nonunitized portions of the leases committed to the unit have been segregated into separate leases and assigned new serial numbers. The unitized portion of each lease will retain the original serial numbers. The lands in the Beaver Creek Unit are described on the attached sheet. 3/
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> Departmental Regulation 43 CFR 3107.5 provides that any lease eliminated from any approved or prescribed cooperative or unit plan, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement, whichever is longer, and so long thereafter as oil and gas are produced in paying quantities. The nonunitized leases are extended through June 13, 1980, a period of two years from contraction of the unit and shown on the attached sheet.
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> By letter dated July 20, 1982, to Bureau of Land Management, Minerals Management Service stated there has been no production of hydrocarbons from those lands eliminated from the unit. Therefore, the nonunitized leases are not held by production and are terminated as of June 13, 1980.

The regulations cited in the decision provide:

§ 3107.4-3 Segregation of leases committed in part.

2/ Marathon filed an interlocutory appeal from other aspects of this decision which are not material herein. That appeal was dismissed Marathon Oil Co., 43 IBLA 309 (1979).

3/ The descriptions and acreages correspond to those in Marathon's schedule I, filed with Survey on Oct. 18, 1978.

> Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan and the other lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.
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> § 3107.5 Extension by elimination.
>
> Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the Act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for 2 years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities. 4/

The crux of Marathon's position on appeal is that the segregated, nonunitized leases should not have been terminated because they continued as one with the parent leases which were in their extended terms due to production at the time of segregation. In its statement of reasons Marathon points out that BLM's March 13, 1979, decision, supra, stated that the eliminated portion of each lease and the unitized portion "continue to form one lease" and that, "in each case, the entire lease is extended by production, either actual or constructive." Marathon contends that the action taken in the 1983 decision is inconsistent with the 1979 decision and with the applicable law and regulations. Marathon argues that only 43 CFR 3107.4-3, not 43 CFR 3107.5, is applicable, since the latter is intended to govern those situations where a lease, in its entirety, is eliminated from a unit plan.

[1] The section of the Mineral Leasing Act (Act), as amended, 30 U.S.C. § 226(j) (1976), from which the above two regulations are derived, provides in part as follows:

> Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: Provided, however, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities. The minimum royalty or discovery rental under any lease that has become subject to any cooperative or unit plan of development or

4/ Pursuant to a revision of the oil and gas leasing regulations effective Aug. 22, 1983, 48 FR 33648 (July 22, 1983), the provisions of these regulations are now set forth at 43 CFR 3107.3-2 and 3107.4, respectively.

> operation, or other plan that contains a general provision for allocation of oil or gas, shall be payable only with respect to the lands subject to such lease to which oil or gas shall be allocated under such plan. Any lease which shall be eliminated from any such approved or prescribed plan, or from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan, or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities. [Emphasis in original.]

Commitment of a portion of a lease to a unit effects segregation under this statute and there remains only the ministerial action by BLM to assign a new serial number to designate the segregated lease. American Resources Management Corp., 36 IBLA 157 (1978).

[2] The case at bar, however, does not involve commitment of a part of a lease to a unit plan. The leases herein were initially placed within the unit in their entirety but subsequently partially eliminated from the unit due to the contraction of the unit. The Act does not call for segregation under these circumstances. The portion of a lease eliminated from a unit plan is not segregated into a separate lease upon elimination. It remains an integral part of the original lease and continues to have the same terms. Therefore, so long as leases A-028078, A-028083, A-028118, and A-028120 lie partially within the Beaver Creek Unit those portions initially within the said unit but subsequently eliminated from the unit will continue coextensively with the said leases. 5/ Continental Oil Co., 70 I.D. 473 (1963), Solicitor's Opinion, M-36592 (1960). BLM erred in segregating these leases and terminating the nonunitized portions.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior 43 CFR 4.1, the decision appealed from is reversed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

5/ In the statement of reasons, Marathon asserts that at the time of segregation, the original leases were in their extended term by reason of production.